

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

GREGORY WILLIAMS,

Plaintiff

-VS-

JOSEPH V. SMITH, WARDEN,
CAPTAIN R. CLAY, and
LIEUTENANT K. GABRIELSON,

Defendants :

NO. 3:CV-05-0890

(Judge Kosik)

MEMORANDUM AND ORDER

AND NOW, this 25th day of August, 2006, IT APPEARING TO THE COURT THAT:

(1) Plaintiff, Gregory Williams, filed the above-captioned Bivens civil rights action on May 2, 2005;

(2) The action was assigned to Magistrate Judge Malachy E. Mannion;

(3) After an extensive procedural history, on July 28, 2006, the Magistrate Judge issued a Report and Recommendation in which he recommended that the defendants' motion to dismiss and for summary judgment be granted and defendants' motion for enlargement of time be dismissed as moot;

(4) Specifically, the Magistrate Judge discusses the legal standards for a motion to dismiss and motion for summary judgment. Thereafter, the Magistrate Judge discusses the administrative remedy procedure with respect to inmate complaints and the documents submitted by the defendants. The Magistrate Judge concludes that according to the materials filed by defendants, the plaintiff failed to exhaust the available administrative remedies with respect to the issues raised in the complaint. While plaintiff initiated the

administrative process, the record reflects that plaintiff never refiled an appeal in the BOP Central Office as directed;

(5) The Magistrate Judge discounts plaintiff's argument that his failure to complete his administrative appeal to the BOP Central Office was due to defendants' actions and states that the record reveals otherwise;

(6) Plaintiff has failed to file timely objections to the Magistrate Judge's Report and Recommendation;

AND, IT FURTHER APPEARING THAT:

(7) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a *de novo* review of his claims. 28 U.S.C. §636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a Magistrate Judge's report prior to adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987);

(8) We have considered the Magistrate Judge's Report and we concur with his recommendation;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Malachy E. Mannion dated July 28, 2005 (Document 50) is **ADOPTED**;

(2) The defendants' motion to dismiss and for summary judgment is **GRANTED**;

(3) The defendants' motion for enlargement of time is **DISMISSED AS MOOT**;

(4) The above-captioned action is **DISMISSED**; and,

(5) The Clerk of Court is directed to **CLOSE** the above-captioned action and forward a copy of this Memorandum and Order to the Magistrate Judge.

s/Edwin M. Kosik
United States District Judge

